

Message Text

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USMISSION GENEVA
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C O N F I D E N T I A L PRETORIA 1646

CAPE TOWN FOR EMBASSY

E.O. 11652: GDS
TAGS: PINT, SHUM, SF
SUBJECT: TRIAL OF STEVE BIKO

REF: CAPE TOWN 448 (NOTAL)

BEGIN UNCLASSIFIED

1. MARCH 30 TRIAL PROCEEDINGS WERE DELAYED BECAUSE STATE
FAILED TO COMPLETE NEW CHARGE SHEET BY MORNING OF SCHEDULED
COURT DATE. STATE HANDED DEFENSE ATTORNEYS CHARGE
SHEET ENTITLED "THE STATE V. BANTU STEVEN BIKO" MINUTES
BEFOE COURT RESUMED AT 1400 SAME DAY. DEFENSE REQUESTED
AND RECEIVED ADJOURNMENT UNTIL FOLLOWING MORNING TO
PREPARE CASE. BEFORE MARCH 30 ADJOURNMENT, ADVOCATE
COOPER SUCCEEDED IN SECURING BIKO'S RELEASE ON R500
BAIL AFTER AGREEING TO STATE STIPULATION THAT BIKO NOT
COMMUNICATE WITH STATE WITNESSES AND THAT HE TAKE
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IMMEDIATE STEPS TO SECURE PERMISSION FROM MAGISTRATE
IN KING WILLIAM'S TOWN (KWT) TO ALTER PRIOR COURT
ORDER WHICH RESTRICTS BIKO TO THE KWT MAGISTERIAL
DISTRICT.

2. CHARGE AGAINST BIKO ARISES OUT OF FEBRUARY 1977
GRAHAMSTOWN SABOTAGE TRIAL OF MONDE WELLINGTON MBEKWA

AND SIX OTHERS IN CONNECTION WITH 1976 BURNING OF FORBES GRANT SCHOOL IN KWT. STATE ALLEGES THAT PRIOR TO GRAHAMSTOWN TRIAL BIKO PERSONALLY AND/OR THROUGH FRIENDS TOLD STATE WITNESSES TO CHANGE EVIDENCE BY DENYING PREVIOUS STATEMENTS AGAINST GRAHAMSTOWN ACCUSED WHICH WERE GIVEN TO POLICE. BIKO ALLEGEDLY TOLD STATE WITNESSES TO CLAIM THAT THE POLICE ASSAULTED THEM TO OBTAIN STATEMENTS. AS RESULT OF CHANGED EVIDENCE, GRAHAMSTOWN COURT FOUND FIVE OF SEVEN ACCUSED NOT GUILTY AND DISCHARGED THEM. MAIN COUNT AGAINST BIKO IS "INTENT TO DEFEAT OR OBSTRUCT THE DUE COURSE OF JUSTICE". ALTERNATIVE COUNT IS "SUBORNATION OF PERJURY" OF SAME WITNESSES. CONTENTS OF STATE'S SECOND CHARGE SHEET IS MORE SPECIFIC VERSION OF FIRST IN RESPONSE TO DEFENSE'S REQUEST FOR PARTICULARS.

3. TRIAL BEGAN MARCH 31 AT EASTERN CAPE DIVISION OF REGIONAL COURT WITH MAGISTRATE S. VAN ZYL PRESIDING. PROSECUTOR J.G. MULLER APPEARED FOR STATE; BIKO DEFENSE TEAM INCLUDED ADVOCATE W.E. COOPER OF CAPE TOWN ASSISTED BY ADVOCATE DENNIS KUNY OF JOHANNESBURG AND INSTRUCTED BY ATTORNEY CHRIS PICK OF GRAHAMSTOWN. AFTER BIKO PLEADED NOT GUILTY ON BOTH COUNTS, COOPER INFORMED COURT THAT KWT MAGISTRATE CLAIMED HIS "HANDS WERE TIED" AND COULD ONLY RELAX BIKO RESTRICTION ORDER TO ALLOW TRAVEL TO AND ATTENDANCE AT EAST LONDON TRAIL. BIKO COMPELLED TO RETURN BACK TO KWT IMMEDIATELY AFTER ADJOURNMENT EACH DAY AND MUST REPORT DAILY DEPARTURE AND ARRIVAL TO POLICE IN KWT OR EAST LONDON. COOPER
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PROTESTED LACK OF TIME TO CONSULT WITH CLIENT AND CLAIMED MEASURE WAS "ALMOST HARASSMENT." VAN ZYL NOTED PROTEST AND SAID TRIAL MIGHT BE MOVED TO KWT IF DEFENSE HAD GREAT DIFFICULTY.

4. STATE PRODUCED TWO WITNESSES ON MARCH 31. FIRST WAS WARRANT OFFICER G.A. HATTINGH OF SPECIAL BRANCH AND INVESTIGATING OFFICER IN GRAHAMSTOWN SABOTAGE CASE. HATTINGH SAID HE SUPERVISED THE INTERROGATION OF THE GRAHAMSTOWN WITNESSES AND SAID CLAIMS OF ASSAULT WERE "WITHOUT FOUNDATION". SECOND WITNESS WAS BOY NKUMBI, 24, WHOSE COUSIN WAS ARRESTED IN CONNECTION WITH THE KWT SCHOOL ARSON. NKUMBI SAID BIKO TOLD HIM TO TELL COUSIN TO DISCLAIM STATEMENTS. AFTER LENGTHY CROSS-EXAMINATION, COOPER TOLD COURT THAT WITNESS WAS LYING. COOPER ALSO TOLD THE COURT THAT WHEREAS THE STATE WITNESSES WERE ARRESTED UNDER SECTION 22, MANY WERE NOW DETAINED UNDER SECTION 6. (FYI SECTION 22 OF GENERAL LAW AMENDMENT ACT 96 OF 1965 ALLOWS 14 DAYS

IN DETENTION; SECTION 6 ACT 83 OF 1967, THE TERRORISM ACT, PROVIDES INDEFINITE DETENTION AND NO ACCESS TO THE DETAINEE.) NKUMBI COMPLETED TESTIMONY APRIL 1 AND WAS FOLLOWED BY NEXT STATE WITNESS, MBUYISLEI EBENEZAR NYATO WHO BEGAN TESTIMONY SHORTLY BEFORE ADJOURNMENT. COURT WILL OFFICIALLY CONVENE APRIL 4 SOLELY FOR BIKO TO CONSULT WITH ATTORNEYS. ACTUAL PROCEEDINGS TO RESUME APRIL 5.
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COMMENT: COURTROOM WAS OVERFLOWING WITH YOUNG AND MIDDLE-AGED SPECTATORS, 95 PERCENT BLACK. DEFENSE ATTORNEYS TOLD EMBOFF AT TRIAL THAT ALTHOUGH THEY WERE PUZZLED WHY STATE WAS MOVING SO FAST AGAINST BIKO, THEY WANTED TO BEGIN PROCEEDINGS BEFORE NEW CRIMINAL PROCEDURE AMENDMENT BILL CAME INTO EFFECT. UNDER BILL,
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ACCUSED MUST STATE ENTIRE DEFENSE TO MAGISTRATE AT TIME OF PLEADING. BIKO TOLD EMBOFF THAT STATE WAS WILLING TO TRY ANYTHING TO PUT HIM AWAY AND THAT UNLESS POLICE AGAIN ASSAULTED WITNESSES, HE DID NOT THINK THEY WOULD OFFER ANY DAMAGING EVIDENCE AGAINST HIM. PROSECUTOR MULLER TOLD EMBOFF THAT ALTHOUGH HE ARGUED WITH HIS SUPERIOR AGAINST PROSECUTING BIKO, IF THE STATE WITNESSES TELL THE COURT WHAT THEY TOLD HIM, BIKO WILL BE CONVICTED. ALL PARTIES AGREED MAGISTRATE VAN ZYL IS HIGHLY COMPETENT AND FAIR. BIKO SAID HE HAD APPEARED BEFORE VAN ZYL BEFORE AND WAS ACQUITTED OF VIOLATING HIS RESTRICTION ORDER.

6. EMBOFF ATTENDED MARCH 30-APRIL 1 COURT SESSIONS AND WILL BE AT TRIAL APRIL 5 WHEN BIKO PROCEEDINGS RESUME. BOWDLER

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